

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SCHUYLKILL MEDICAL CENTER
SOUTH JACKSON STREET d/b/a
LEHIGH VALLEY HOSPITAL
SCHUYLKILL SOUTH JACKSON STREET

and

SCHUYLKILL MEDICAL CENTER
EAST NORWEGIAN STREET d/b/a
LEHIGH VALLEY HOSPITAL
SCHUYLKILL EAST NORWEGIAN STREET,

Employer

and

Cases 04-UC-200537
04-UC-200541

SEIU HEALTHCARE PENNSYLVANIA,

Petitioner

**BRIEF OF PETITIONER, SEIU HEALTHCARE PENNSYLVANIA,
IN SUPPORT OF THE REGIONAL DIRECTOR'S DECISION**

BRUCE M. LUDWIG, ESQUIRE
Willig, Williams & Davidson
1845 Walnut Street
24th Floor
Philadelphia, PA 19103
(215) 656-3644 (phone)
(215) 561-5135 (fax)
bludwig@wwdlaw.com

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND	2
III.	ACCRETION IS WARRANTED BECAUSE OF THE OVERWHELMING COMMUNITY OF INTEREST AND BECAUSE THE UNREPRESENTED EMPLOYEES CANNOT BE CONSIDERED A SEPARATE APPROPRIATE UNIT.	5
A.	The Standards for Accretion	5
B.	All Relevant Factors, Including the Most Critical Ones, Support Accretion Based Upon the Standard in Safeway Stores	8
	1. Geographical Proximity of the Two Campuses	8
	2. Common Ownership	8
	3. Common Administration	9
	4. Central Control Over Labor Relations	9
	5. Functional Integration	10
	6. Interchange of Employees	12
	7. Similarity of Employee Skills and Job Classifications	15
	8. Common Supervision is Prevalent	17
	9. Similar Working Conditions	19
	10. Interactions Among the Employees	21
	11. Bargaining History	23
	12. The Union has Majority Status	23
C.	To the Extent the Single Site Presumption Applies, it has Been Rebutted	25
D.	A Unit of the Non-represented Employees at East Would be Utterly Inappropriate	27
IV.	CONCLUSION	30

TABLE OF AUTHORITIES

Cases

AT Wall Company, 361 NLRB (2014)	5
Baptist Memorial Hospital, 224 NLRB 201 (1976)	25
Central Soya Company, 281 NLRB 1308 (1986)	6, 24
Frontier Telephone of Rochester, Inc., 344 NLRB 1270 (2005)	6
Gitano Group, Inc., 308 NLRB 1172 (1992)	6, 8, 24
Granite City Steel Co., 137 NLRB 209 (1962)	19, 23
Kaiser Foundation Health Plan, 225 NLRB 409 (1976)	26
Lutheran Welfare Services of Northeastern Pa., 319 NLRB 886 (1995)	27
Manor Healthcare, 285 NLRB 224 (1987)	24, 25
Mercy Health Services North, 311 NLRB 367 (1993)	7, 23
Mercy Hospitals of Sacramento, Inc., 217 NLRB 765 (1975)	26
Passavant Retirement and Health Center, Inc., 313 NLRB 1216 (1994)	6
Presbyterian University Hospital, 313 NLRB 1341 (1995)	24
Renaissance Center Partnership, 239 NLRB 1247 (1979)	23
Rock-Tenn Co., 274 NLRB 772 (1985)	23
Safeway Stores, Inc., 256 NLRB 918 (1981)	1, 5
Special Machine & Engineering, Inc., 282 NLRB 1410 (1987)	6, 29
St. Luke's Health System, Inc. 340 NLRB 1171, 1171 (2003)	25
The Child's Hospital, 307 NLRB 90, 91-92 (1992)	24
The Great Atlantic and Pacific Tea Company, 140 NLRB 1011 (1963)	5

Towne Ford Sales, 270 NLRB 311 (1984);	6
U.S. West Communications, Inc., 310 NLRB 854 (1993).....	6
West Jersey Health System, 293 NLRB 749 (1989)	25,26
Western Cartridge Co., 134 NLRB 67 (1961)	6

I. INTRODUCTION

Based upon an extensive record, Dennis Walsh, the Regional Director of Region 4 issued, on October 6, 2017, a Decision, Order and Clarification of Bargaining Unit ("Decision") granting Unit Clarification Petitions filed by SEIU Healthcare Pennsylvania (herein after "SEIU", "Union" or "Petitioner"). The Employer sought review of this Decision pursuant to § 102.67(d) at the Board's Rules and Regulations.¹ The request was premised on several alleged errors by the Regional Director. By Order dated January 25, 2018, a panel of this Board granted review in part and denied review in part. The one issue accepted for review is whether the Regional Director's finding that the "East" employees constitute an appropriate accretion to the unit is consistent with the standard articulated in *Safeway Stores, Inc.*, 256 NLRB 918, 918 (1981). Member Pearce concurred in part and dissented in part as he found that there was no compelling reason to grant review.

SEIU agrees with Member Pearce that the Regional Director's Decision, while not explicitly citing *Safeway Stores*, is fully consistent with the standards for accretion set forth in *Safeway Stores*. Further, the Regional Director's findings of fact on the relevant factors for accretion are fully supported by the record. Reversing the Decision would result in the artificial separation of employees working side by side performing the same job duties, for the same employer and in most cases under the same supervision. These employees have little separate identity and share an overwhelming community of interest. Thus, if not accreted, the unrepresented employees at East would constitute an entirely inappropriate unit.

¹ The Employer also sought a stay of the Decision but that request was denied unanimously by this panel in an Order dated November 24, 2017.

II. FACTUAL BACKGROUND²

The Union has represented LPNs, technical employees and service and maintenance employees at the hospital located at 420 S. Jackson Street since 1975. (T. 14-5; see Pet. Ex. 1). At that time, the hospital was operating as the Pottsville Hospital and Warne Clinic. There was a separate hospital in Pottsville located at 700 East Norwegian Street, formally known as Good Samaritan Medical Center. In 2008, those two hospitals merged which resulted in a new parent organization, called Schuylkill Health System. With that merger, the Pottsville Hospital became Schuylkill Medical Center-- South Jackson Street. Good Samaritan became Schuylkill Medical Center-- East Norwegian Street. Initially both hospitals functioned separately and the Union only represented employees at South Jackson Street.

In the beginning of 2015, Schuylkill Health System developed a “campus integration plan” aimed at integrating and consolidating clinical services of two campuses in order to achieve financial sustainability, staffing efficiency and improved patient care. (Joint Ex. 2 ¶ 8; Pet. Ex. 3; T. 20, 71-72) At that time, there was a collective bargaining agreement between the Union and Schuylkill Medical Center-- South Jackson Street covering, in one contract, the LPNs, technical and service and maintenance employees. (Pet. Ex. 2) The Schuylkill Medical Center--South Jackson Street approached the Union to discuss bargaining over the effects of the plan to integrate the two campuses. (T. 21-23) The staff at East Norwegian Street are unrepresented. In late August, 2015, the parties, after a series of negotiating

² Unless otherwise indicated this factual background is based on the stipulations contained in Joint Exs. 1 and 2.

sessions, reached a tentative agreement on the subject of integration. This document entitled, "Agreement on Integration Guidelines Between Schuylkill Medical Center South Jackson Street and SEIU Healthcare Pennsylvania" ("Integration Agreement") was executed in September 2015. (Pet. Ex. 8). Among other things, the Integration Agreement provided for staff from South Jackson Street represented by the Union to be transferred to the East Norwegian Street campus while retaining their status in the bargaining unit and protected by the existing collective bargaining agreement. It also established a single "system" wide seniority list. This combined list is used in reassigning employees and in filling of vacancies that may arise at either campus. (T. 23, 32; Joint Ex. 1, ¶¶34)

After the execution of the Integration Agreement, the parties began negotiating for a successor collective bargaining agreement. (T. 38) While those negotiations were ongoing, there was a subsequent merger. Specifically, on or about September 16, 2016 Schuylkill Health System merged into the Lehigh Valley Health Network. By virtue of this merger, the separate existence of Schuylkill Health System ceased and the Lehigh Valley Health Network became the surviving nonprofit corporation. (Pet. Ex. 12 and 13) After the merger, Schuylkill Medical Center--East Norwegian Street began doing business as Lehigh Valley Hospital--Schuylkill East Norwegian Street ("East"); Schuylkill Medical Center--South Jackson Street began doing business as Lehigh Valley Hospital--Schuylkill South Jackson Street ("South"). Lehigh Valley Health Network is the owner of East and South. The term Lehigh Valley Hospital- Schuylkill ("LVH-S") is used to refer to the combined East and South campuses. (See Pet. Ex. 12) It was stipulated

that these two campuses constitute a "single integrated enterprise" and a "single employer." (T. 127-128)

The Employer continued the plans of Schuylkill Health System to consolidate and integrate South and East. (See Pet. Ex. 19) Phase one of integration has been completed. Among other changes, the operating room, medical-surgical and telemetry units and the ICU unit that were at South have been consolidated at East. There are plans to further consolidate and integrate the two campuses. (See Joint Ex 1, Ex. B). While there is presently an emergency department at each facility, the plan is to consolidate and have only one emergency department at East. (T. 328-329; 330-331) The Employer is also planning to transfer pediatrics and maternity units from South to East. (T. 435) Some of the departments may move from East to South. As a result of the movement of departments, employees working in those departments have been transferred from South to East. In some cases, parts of a department and some of the staff of that department have moved from South to East. In other cases, employees were assigned to rotate between the two locations. As a result, Union employees began working side by side with unrepresented employees.

The spreadsheets, attached as Exhibits C and D to Joint Exhibit 1, identify those employees who have been assigned to a new work location because of integration. Those spreadsheets also identify numerous employees who rotate on a regular basis between South and East. Furthermore, by virtue of the integration and consolidation of departments, many union and non-represented employees have a common immediate supervisor. The presence of a common supervisor is shown on Exhibits C and D attached to Joint Exhibit No. 1.

On April 24, 2017, the Employer and the Union reached a tentative agreement for a successor collective bargaining agreement. (Pet. Ex. 18) The term of that agreement is from May 1, 2017 through April 30, 2020. It was ratified by the Union membership on April 27, 2017. As part of that new contract, the Integration Agreement remains in effect until March 31, 2019. Bargaining unit employees who transferred to work at East under the terms of the Integration Agreement remain members of the bargaining unit as long as they remain in the positions they held on March 31, 2019. (Pet. Ex. 18)

III. **ACCRETION IS WARRANTED BECAUSE OF THE OVERWHELMING COMMUNITY OF INTEREST AND BECAUSE THE UNREPRESENTED EMPLOYEES CANNOT BE CONSIDERED A SEPARATE APPROPRIATE UNIT.**

A. **The Standards for Accretion**

The Board has found a valid accretion when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the pre-existing unit to which they are accreted. *Safeway Stores, Inc.*, 256 NLRB 918, 918 (1981).³ In making this the determination, the Board analyzes the standard community of interest factors: interchange and contact among employees, degree of functional integration, geographical proximity, similarity of working conditions, similarity of employee skills and functions, common supervision and history of

³ While the Regional Director did not directly cite *Safeway Stores*, his Decision does *not* depart from the standards articulated in that precedent. The Regional Director relied on *Gitano Group, Inc.*, 308 NLRB 1172 (1992) which explicitly applied the standard for accretion from *Safeway Stores* as well as citing that case. 308 NLRB at 1174, 1174 fn.13 and 1175 fn.23. Accordingly, the Regional Director's Decision is fully consistent with *Safeway Stores* when it concludes that: "The Employer implemented a plan to eliminate the separate identities of South and East and create 'one combined hospital', and it has accomplished that goal." (Decision at p.15.)

collective bargaining. *AT Wall Company*, 361 NLRB 695, 697 (2014); *The Great Atlantic and Pacific Tea Company*, 140 NLRB 1011, 1021 (1963). The Board views as most critical the factors of employee interchange and common day to day supervision. *AT Wall Company*, *supra*, citing *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005); *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218 (1994); *Gitano Group, Inc.*, 308 NLRB 1172, 1174 (1992); *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984); *Western Cartridge Co.*, 134 NLRB 67, 69 (1961).

Based upon these standards, the Board has found an accretion when an employer integrates or consolidates two (2) separate facilities. For example, in *Central Soya Company*, 281 NLRB 1308 (1986), the employer operated a feed mill at one location at which the employees were represented by a union. Subsequently, it purchased another feed mill at a separate location. The employer transferred employees from the original location to the acquired location. It took other steps to consolidate the operations and establish a community of interest among the employees. Accordingly, the Board found an accretion appropriate and the employer was ordered to bargain with the union with respect to this consolidated operation. Similarly, in *Special Machine & Engineering, Inc.*, 282 NLRB 1410 (1987), the Board found an accretion based upon a consolidated operation at two (2) locations. *U.S. West Communications, Inc.*, 310 NLRB 854 (1993) is another case in which reorganization led to an accretion. There the two (2) groups of employees at issue were represented by separate unions. Initially, the separate units had their own operational and administrative structure. However, with the change in technology, the employer reorganized its operations and, as a result, created a

centralized operation over both groups of employees. In some cases, employees were working in the same building, on the same floor and were side by side. But there were two (2) separate collective bargaining agreements and thus differing working conditions. However, the operation was sufficiently integrated such that the two (2) groups of employees shared a significant community of interest. As a result, the employer's petition for unit clarification based upon accretion was granted and the one bargaining unit was accreted into the larger bargaining unit represented by CWA.

Accretion based upon consolidation and integration of operations has also been found in the health care industry. In *Mercy Health Services North*, 311 NLRB 367 (1993), the Board granted a unit clarification petition seeking accretion. In that case, the employer operated an acute care hospital in one city. The union represented the nurses at that hospital. Subsequently, the employer consolidated some of its health care operation at a new facility in a different city. Nurses were transferred from the acute care hospital to the second location which was 40 miles away. Both groups of nurses were under the same supervision although there were separate human resources managers at the two facilities. There was evidence, although limited, of some interchange between the two (2) facilities. The employer treated the two (2) facilities as separate profit making centers and they were separately licensed. There was a separate pay structure for the two (2) facilities. The facilities had different hours of operation. However, the Board found that the factors in favor of accretion -- common skills and functions, common supervision, some interchange, daily telephone contact between the two (2) groups -- outweighed the factors against the accretion, including the 40 mile geographic distance between the two (2) locations, the separate human

resources managers, the differences in pay structure and hours of operation. Applying the analysis set forth in *Gitano*, the presumption of a separate unit was rebutted and the nurses at the second location were accreted into the existing bargaining unit. The Board affirmed the Regional Director whose decision explicitly utilized the “restrictive policy” on accretion found in *Safeway Stores*. 311 NLRB at 369.

Applying these cases to the facts⁴ here warrants a similar conclusion.

B. All Relevant Factors, Including the Most Critical Ones, Support Accretion Based Upon the Standard in Safeway Stores

1. Geographical Proximity of the Two Campuses

The East and South campuses (as they are often called) are in close proximity, specifically a half a mile apart. (Joint Ex. 1 at ¶ 10; Joint Ex. 2 at ¶ 2 and 3)

Given this close proximity supplies that are needed at one facility are often hand delivered to the other. This happens, for example when prescription drugs are needed at the South campus during the evening hours when only the pharmacy at East is open. In that case the medications are delivered to South. (T. 345) As another example, deliveries occur from time to time when the cafeteria at one campus needs some food supplies from the other. (T. 224, 226-227)

2. Common Ownership

Lehigh Valley Health Network is the common owner of both hospitals. (Joint Ex. 1 at ¶ 1 and 2; Pet. Ex. 13) This was also the subject of a stipulation in which the parties agreed that both hospitals are owned and operated by Lehigh Valley Health Network.

⁴ Petitioner's review of these facts does not suggest disagreement with the Regional Director's findings of fact. Those findings, at pages 15-20 of the Decision, are more than amply supported by the record and justify accretion under the relevant standard.

(T. 127) More significantly, it was stipulated that both hospitals are a “single integrated enterprise and a single employer”. (T. 127) This single integrated entity is often referred to as “Lehigh Valley Hospital – Schuylkill”. (T. 127; 333-334; See Pet. Exs. 12, 26, 28 and 29)

3. Common Administration

This single integrated employer has a single administration. It was stipulated that there is common senior operating management. (T. 127) The President of both East and South is William Reppy. Other high level management positions, including the Vice President of Patient Care Services and the Vice President of Operations, have responsibility over both South and East. (Joint Ex. 1 at ¶ 3) The responsibilities of these and other management positions are outlined in an organizational chart which further documents the common administration of the clinical services, the post-acute care services and the operations of both hospitals. (Joint Ex. 1 at Ex. A). This organization chart and the functioning of common senior management was also described in the testimony of Vice President Susan Curry. (T. 333-336)

4. Central Control Over Labor Relations

As part of the common administration of both facilities, there is a single Human Resources department with a single Human Resources Director, Tom McPhillips, that controls personnel matters at both campuses and over all the employees, Union and non-union. (Joint Ex. 1 at ¶ 5 and Ex. A; T. 336-337; 409)

The Human Relations office is in the East facility. That is where Mr. McPhillips and his staff have their principal offices. (T. 409-410) Personnel files of all employees – union and non-union, South and East – are maintained at that location. (T. 410-411)

All hiring recommendations made at the departmental level need to be approved by Human Resources. (T. 302, 309, 311, 360, 377, 411-412) Similarly, all discipline issued above the verbal warning level, whether to Union or non-union staff, must be reviewed by the central HR office. (T. 300, 346, 347, 412) Therefore, there is a common personnel operation.

5. Functional Integration

There can be little doubt that the two hospitals are functionally integrated. In fact, the Employer agreed the two campuses are a “single integrated enterprise.” (T. 127) That was done to achieve “financial sustainability, staffing efficiency and to improve clinical care”. (Joint Ex. 2 at ¶ 8) As witnesses explained, the two facilities had been in serious financial stress for several years. The common owner recognized that, if it didn’t consolidate duplicative services, it would not be able to sustain the operation. (T. 71-72) Accordingly, a plan was developed for “campus integration”. (Pet. Exs. 3 and 26) Because the plan would affect all employees, PowerPoint presentations were provided to staff. They explained the need for consolidation of services. They noted that the population and volume does not support two full service facilities. (Pet. Ex. 3 pg. 10) The solution for these problems, as outlined in the PowerPoint, was to consolidate acute care beds at the East campus under one hospital license. (Pet. Ex. 3 pg. 11; see Pet. Ex. 19)

As part of the integration plan a number of services and departments have been consolidated. All medical-surgical and telemetry units were moved from South to East. The ICU was also moved from South to East. The Operating Room for inpatients was moved from South to East. (Joint Ex. 1 at Ex. B; T. 329, 332) An Outpatient Surgical

Center remains at South. (T. 331, 242) Parts of the Pharmacy were transferred from South to East. (T. 345)

According to the 2016 PowerPoint, various ancillary services were also integrated. For example, Occupational Medicine was located in the South campus. The nursing office was moved at East. Infusion and Therapy was relocated to East. CPR/First Aid Training Center was relocated to South. (Pet. Ex. 19) Other support services, e.g. Interventional Radiology, have followed the transfer of acute care to East.

Another example of functional integration involves the pharmacies that exist at both South and East. Given the transfer of acute care services to East, additional pharmacy staff were needed at East. Accordingly, a number of pharmacy technicians were transferred from South to East. (T. 250-251, 254) Prior to integration the South pharmacy would order its own medications from a supplier. After integration, South and East share inventory. The East pharmacy orders medications for both East and South. If South is short, the East pharmacy will transfer medications to that facility. (T. 256-257) The pharmacy at South is only open during the day shift. (T. 321-322, 345) Therefore, when medications are needed in the evening for patients at South, they are dispensed by the pharmacy at East. (T. 345)

There are further plans for consolidation and integration. (Joint Ex. 1 at ¶ 6) While there are currently two emergency rooms, the definite plan is to have only one; the recently renovated emergency room at East will be the only emergency room and the sole point of entry into the system. (T. 329, 330) The second phase of integration also includes moving the Pediatrics and Maternity (OB/GYN) departments from South to East. (T. 328-329; 330-331, 435) The inpatient rehabilitation and geriatric behavioral

health departments located at East may be consolidated with other departments at South. (T. 330-331) If they are moved, the transferred employees would be included in the existing Union bargaining unit by virtue of the Integrated Agreement.

With these existing and planned consolidations, patients requiring acute care services or surgical services would be admitted to or transferred to East. Patients who require behavioral health services would be admitted or transferred from East to South. (T.347-348) There are common procedures for registration and discharge of patients. (T. 348) Clinical practices are being standardized. (T. 156, 157, 166, 325-328)

Finally, staff were moved along with their departments or functions as part of this consolidation. (Joint Ex 1 at ¶ 11, ¶ 33; T. 73) The Integration Agreement facilitates the movement of staff both initially and with respect to future reassignments or filling of vacancies. (Pet. Ex. 8)

6. Interchange of Employees

There is overwhelming evidence on this critical factor. With the integration and consolidation of the two campuses, there was a corresponding integration of staff. Many bargaining unit employees have been moved with their departments, or part of their departments, from South to East. (See, e.g., T. 130, 142-143, 150-151, 165, 181, 192, 232, 236-237, 250-251) This reassignment and transfer is set forth in detail with respect to the LPN/technical employees in the spreadsheet attached as Ex. C to Joint Ex. 1. For the service and maintenance employees, the transfer of employees whose original location was South (identified as "payroll" on the spreadsheet) to the East campus are identified in Ex. D to Joint Ex. 1 at ¶ 11.

In addition to these permanent transfers, there are employees in various departments (e.g., OR, Radiology, Respiratory Therapy, Laboratory and others) who have a regular schedule in which they work some days at East and some days at South. (T. 202-203, 267-268, 343-344, 391-392) Examples of those schedules were introduced through the testimony of individual employees. (T. 200-201, 204-205, 210-211; Pet. Exs. 21 and 22) Further, the spreadsheets attached as Exhibits C and D to Joint Exhibit 1, indicate, in various ways,⁵ those employees who have regular assignments at both campuses.

From these stipulated spreadsheets, Union witness Kevin Hefty created a summary chart for the LPN/technical positions. It shows there are a total of 162 such positions at both campuses South and East. Of that total, 66 are non-union employees at East. There are 71 Union represented employees who have either been transferred permanently to East or who rotate to East on a regular basis. Of that 71, 27 are permanently assigned to East; 44 are Union represented employees who regularly work at both South and East. (T. 272-275; Pet. Ex. 23)

A similar chart was prepared for the service and maintenance employees. There are a total of 218 such employees at East and South. Of those, 94 are non-union employees who have been at East. Fifty-four (54) Union represented employees have been transferred either on a permanent basis or on a rotational basis to East. Of those 54, 41 Union represented employees were reassigned permanently from South to East;

⁵ On some occasions, the term "50/50" is used in the spreadsheet. Other times the terms "East/South" or "South/East" are used. Other descriptions in the spreadsheet which indicate dual assignments are "assigned to East/rotation" and "South/rotation". All terms designate some regular rotation between the two (2) facilities.

13 are in some form of rotation in which they are required to work at both campuses on a regular basis. (T. 278-279; Pet. Ex. 24)

In addition to these permanent transfers and regular rotation schedules, employees are “pulled” on occasion from one campus to another or “cover” a position at a different campus.⁶ (T.199, 236-237; 242-243; 266-267; 322-323) This includes East employees working, at times, at South. (T. 199, 266-268, 322-323; Decision at pg. 16 fn.6) As the Regional Director found, “...The Employer freely resorts to soliciting or ordering additional temporary transfers when doing so would be helpful.” (Decision at pg. 16)

There are also examples in which employees, on a voluntary basis, work overtime at a campus other than the one to which they are regularly assigned. (T. 269, 398-399) Supervisor Keri Folk maintains a list for voluntary overtime at South that East employees can sign for. She also maintains a list for voluntary overtime at East that South employees can sign for. Furthermore, at least once every pay period an East employee works overtime at South in the Behavioral Health Department. (T. 269; Decision at p. 16 fn. 6)

Obviously with the plans for future Integration, more staff will be transferred either permanently or temporarily. There are currently eight (8) Union service employees of the South Emergency Department; two (2) Union technical employees and one (1) Union service employee at the South Maternity Unit; and two (2) Union technical employees at the South Pediatrics Department. (Joint Ex. 1 at Exhibits C and D) All of these Union positions would be transferred when, as the Employer plans, their

⁶ Such temporary transfers are explicitly permitted by the Integration Agreement. (Pet. Ex. 8 at ¶ H)

respective departments move to East. It is likely that the transfer would affect other Union positions at South which provide support services for these departments.

7. Similarity of Employee Skills and Job Classifications

There is a high degree of similarity of skills and job classifications among the Union and non-union represented employees at this integrated facility.

With respect to departments at East now staffed by Union and non-union employees, those employees work side by side, perform the same duties and receive the same types of assignments. Their skills are equivalent. (Joint Ex. 1 at ¶ 12; T.153-155, 165-166, 183, 196, 206, 208, 234-236, 241-252, 255-256,344)

Furthermore, for the bulk of the positions at South and East, while they might be slightly different job titles, the parties stipulated that the job functions are substantially identical regardless of their status of Union or non-union. (Joint Ex. 2 at ¶ 26)

For the few classifications for which the parties did not stipulate as to similar duties and skills, the relevant job descriptions are attached as Exhibit C to Joint Exhibit 2. (Joint Ex. 2 at ¶ 27) Those documents and relevant testimony demonstrate the similarity of skills and duties even for those classifications.

With respect to the pharmacy tech position, the parties stipulated that the job functions of the Union pharmacy tech and the non-represented Pharmacy Tech I are similar. One nominal difference is the existence of a Pharmacy Tech II in the unrepresented group. The Tech II's are certified. (T.251, 323-324) However, the Union represented pharmacy techs also include those who are certified even though they are not separately identified. (T. 252, 351) Furthermore, the testimony was that the certified

pharmacy techs do the same work as the non-certified pharmacy techs whether they are Union or not. (T.252, 254-256, 257-258)

There are slightly different job titles for food service workers in the represented unit and compared to the non-union. For the bargaining unit, there are two positions within the larger food service worker classification: dietary aide and hostess. In the non-represented group, there is a single food service worker classification. However, the overall duties of the positions are the same. It is just that on the Union side the two food service functions are split, while they are combined in the non-union position. (T.368, 423-424; see Joint Ex. 2, Ex. C at Bates pages 000484 and 000437) There is no difference in the job skills necessary for either position. (See Pet. Ex. 8 at pg. 2 ¶ D)

The same analysis applies to the maintenance positions. In the bargaining unit, there is a single job classification of General Maintenance Mechanic while, in the non-represented there are a Maintenance I and II positions. The Employer witness testified that the Maintenance II position differs from the Maintenance I position in that the former involves the more skilled tasks of maintaining equipment such as the HVAC systems, the plumbing and electrical systems, etc. However, the same witness admitted that the Union represented single position of General Maintenance performs all those same functions and has the necessary skills to maintain the HVAC, electrical, plumbing, gas supply systems, etc. (T. 363-364, 423, see Joint Ex. 2, Ex. C at Bates 000456, 000460 and 000495) The positions are therefore interchangeable.

The final job classification which is not the subject of a stipulation involved housekeepers. In the bargaining unit, there are Housekeepers I and II, while in the non-represented group there is a Housekeeper and Lead Housekeeper. Nevertheless, the

job duties and skills of these positions are similar. The cleanliness standards are the same for East and South. (T.374, 425-426) According to the actual job descriptions, the distinction between the Union represented Housekeepers I and II is that the II's do project work involving the stripping of floors, etc. (Compare job descriptions at Joint Ex. 2, Ex. C, Bates pages 00500 and 00504). The single classification of Housekeeper in the non-represented unit combines the duties of the Housekeeper I and II as the job description for that Housekeeper position includes waxing and buffing of floors. (Joint Ex. 2, Ex. C at Bates page 00440) The lead housekeeper performs some minimal lead responsibilities but otherwise functions as a "housekeeper". (Joint Ex. 2, Ex. C at Bates pages 00453-454) ⁷ The testimony also confirmed that the job duties and skills of the Union housekeepers are the same as the unrepresented housekeepers at East. (T. 134, 142-144) The same is true for the laundry workers. (T. 132)

In sum, there is a substantial overlap of job classification, skills and duties. If not exactly the same, they are similar between the Union and non-represented positions at East and South.

8. Common Supervision is Prevalent

The stipulated evidence demonstrates there is an overwhelming degree of common day by day supervision over both Union and non-union employees. A number of specific examples are outlined on Joint Exhibit 1 at ¶s 14-32. (See T. 130, 137, 140, 148-149, 175, 196, 204, 245) Furthermore, the two spreadsheets attached to the Joint Exhibit 1 also show for each employee the name of their immediate supervisor. (Joint Ex. 1 at Exs. C and D) It demonstrates the prevalence of common supervisors.

⁷ The Union bargaining unit contains lead workers such as a lead cook. (T.222, 424)

There were a few employees for whom the parties could not stipulate as to their immediate supervisors. One case was the cooks in the dietary departments at both East and South.⁸ While originally the designation of the supervisor of the cooks was in dispute, the testimony established that the immediate supervisor of the cooks at both locations is the Executive Chef, Joe Palmeri. This was confirmed by the testimony of Brian Symons, a long time cook at South. He testified that the Executive Chef is the one who responsibly directs the work of all the cooks both at East and South. Furthermore, Mr. Palmeri completes performance evaluations of all the cooks. (T. 222-223; 227) This testimony was then confirmed by Mr. McPhillips, who agreed that the Executive Chef is a supervisor of all the cooks. (T. 365-366; 425)

Based on the information contained on this stipulated spreadsheet and this additional testimony about the cooks, the Union summarized the number of cases where employees have common supervision. Petitioners' Exhibit 25, which is the product of Kevin Hefty's review of the stipulated spreadsheets, sets forth that information. (T. 279-285) For the LPN/technical bargaining unit, looking at both union and non-union employees at either facility, 145 of the 162 total number of employees have common supervision. In other words, over 90% of the proposed accreted bargaining unit has common supervision in one form or another. In many cases, the supervisor has an office at both South and East. (Pet. Ex. 25) In the service and maintenance combined unit, there is a similar high level of common supervision. Of the 218 total employees in that category, 177, or 81%, have common supervision. (Pet. Ex. 25) Accordingly, this critical factor strongly supports accretion.

⁸ Management of both dietary operations has been subcontracted to Sodexo. (T. 371-372)

9. Similar Working Conditions

Given the integration of staff, there are many Union and non-union employees working in the same department, in the same facility, and therefore under the same working conditions. In addition, those employees have similar work assignments. (Joint Ex. 1 ¶ 12)

An important common condition of employment for the Union and non-union employees is the combined or “dove-tailed” seniority list that was created pursuant to the Integration Agreement (Pet. Ex. 8) See, *Granite City Steel Co.*, 137 NLRB 209, 211 (1962). Under that Integration Agreement, employees use their “System Seniority,” which is defined as their most recent date of hire, either full time or part time, at South or East. Employees who transfer from one hospital to the other are credited with seniority from both hospitals as long as there is no break in service. (Pet. Ex. 8 at ¶ I.A.) This integrated seniority list is used for critical personnel actions. First, employees are reassigned using this dovetailed seniority list of East and South employees. (Pet. Ex. 8 at ¶ II. D.) Secondly, if the number of employees exceed the available positions in a classification and a particular department on any shift at East, the unassigned individuals are given reassignment options based on System Seniority. (Pet. Ex. 8 at ¶ II. E.; T. 413) Thirdly, the combined seniority list is used for filling of vacancies. Under the Integration Agreement, job openings at East are posted at South and East. Employees at either location may bid on the posted position with the most senior qualified bidder being offered the position. (Pet. Ex. 8 at ¶ II. L and M; T. 412-413) Similarly, job openings at South are posted at both facilities. Either represented or non-represented employees can bid on the posted position using their system seniority. If

an unrepresented employee is selected to fill a position at South, that employee becomes part of the collective bargaining unit. (*Id.*) In sum, this single seniority list and its reassignment and filling of vacancy provisions establish a common term of employment for Union and non-union employees.

There are other common working conditions. Basic hours of work and shift times are the same. (T. 140, 157-158, 192, 200-201, 361, 407) Employees at both hospitals wear the same basic uniform or abide by the same dress restrictions set by the Employer. (Joint Ex. 1 at ¶40; T. 136, 143, 146, 159, 168, 183, 198, 209, 416) All employees wear a LVHN name tag which does not distinguish whether the employee is working at East or at South or whether the employee is Union or non-union. (Joint Ex. 1 at ¶40; T. 143, 146, 159, 168, 183, 209, 227, 238, 415-416) The pay periods and pay date for all employees are the same. (Joint Ex. 1 at ¶45; T. 229-230, 422)

There are in many cases, but not in all, common personnel policies as the content is the same or similar.⁹ That is true with regard to the Employer's policies on: worker's compensation, FMLA, sexual harassment, uniform and ID requirements, confidentiality of information, restrictions on the use of mobile phones, and permissible uses of the employer's email or computer system. (T. 413-417) All employees of the Employer are subject to an annual performance evaluation system. (T. 410)

There are also common or similar benefits. All employees are in the same "defined contribution" pension plan. (Joint Ex. 1 ¶41; T. 418) While there are different financial terms for cost sharing, both Union and non-union employees are in a Highmark designed and administered health insurance plan. (see Employer Ex. 9 and 10; T.417-

⁹ All the personnel policies are held over from the prior Schuylkill Health System. The Employer stated its plans to review the policies to determine how to integrate them into the LVHN system. (T. 422)

418) Those plans have common features, the most important of which is the “Home Host program” in which services rendered at the LVH-Schuylkill hospitals are provided at no cost to the employee. (See Employer Exs. 9 and 10; T. 417-418) Both groups of employees have a dental plan through Delta Dental. Both groups of employees have five (5) personal days. (Joint Ex. 1 at ¶43; T. 420) Both groups of employees have six (6) paid holidays. (Joint Ex. 1 at ¶42; T. 419) Both groups of employees have the Employer paid life insurance, although the amounts differ for union verses non-union employees. (T. 418) There is a common employee assistance program. (T. 416)

In sum, while the collective bargaining history has resulted in different levels of compensation and differing benefits in some areas, nevertheless there are many similar terms and conditions.

10. Interactions Among the Employees

There is a great deal of contact between Union and non-union employees. There is professional or work-related interaction among those employees who are now in mixed departments of East. (T. 131-134, 142-144, 153, 156-158, 167, 183, 192, 196-197, 200, 208) That is also the case with regard to those Union employees who regularly rotate between South and East. As previously mentioned, there are 44 LPN or technical employees who spend time on a regular basis in both East and South. There are approximately 41 service and maintenance employees who spend time on a regular basis at both campuses. This does not include the ad hoc “pulls,” temporary “covers” or voluntary overtime assignments that create additional interaction among the employees at both campuses.

There is also testimony that, in certain departments which are split between South and East, the employees are still in contact with one another. For example, there are staff meetings or training sessions which involve both South and East employees in a department which is located in both campuses. Those joint meetings are either in person or by conference call. This occurs regularly in the Pharmacy Department (T. 254-255, 259, 263); the Behavioral Health Department (T. 436-437); the Emergency Room Department (T.238-239; 438-440) and in the Housekeeping Department. (T. 131-132, 138). The Medical Surgical Performance Council includes both East and South employees. (T. 156-157; 326)

In other ways, the Employer facilitates contact among the employees either through common communications or shared events. For example, there is a weekly newsletter that goes to all employees, East and South, union and non-union. (Joint Ex. 1 at ¶ 36; Pet. Ex. 27; T. 340) All employees have access to an Employer intranet. (Joint Ex. 1 at ¶37; T.426) There are email messages from the President of LVH-Schuylkill to all employees. (Pet. Ex. 26, 28 and 29; T. 338-339, 341-343) Town hall meetings have been conducted by the President to which all employees were invited. (Joint Ex. 1 at ¶39; T.338) Other meetings about integration have been held. (T. 179-180) There are a variety of social events that are open to employees from both facilities whether Union or non-union. (Joint Ex. 1 at ¶38; T. 135-136, 388-389; 427-428)

Both Union and non-union employees share break rooms. (T. 185, 197-198, 208, 237) Cafeterias at both campuses are open to all employees. (Joint Ex. 1 at ¶44; T. 427) There is 4-digit dialing between campuses to facilitate communication. (T. 343)

Employees are permitted to fill their personal prescriptions at the hospital pharmacy. In the past, that could be done at either East or South. However, as part of the integration, all employees who wish to fill personal prescriptions have to do so through the pharmacy at East. (T. 184-185, 263-264; 345)

In sum, there is regular interaction among the employees whether they be represented by the Union or not.

11. Bargaining History

Bargaining history is sometimes listed as a factor to be considered in accretion cases. However, it is not determinative when outweighed by the other more critical factors. See e.g., *Granite City, supra*, 137 NLRB at 212. That is particularly the case when there have been significant changes in the structure and operations of the employer. *Rock-Tenn Co.*, 274 NLRB 772, 773 (1985) Given the substantial changes in the structure and operations of the Employer resulting from the actual implementation of its campus integration plans, the separate bargaining history of South is of little importance for purposes of this analysis. Further, there is less significance to differences which result from the employer's decision not to treat the unrepresented employee as bargaining unit employees. *Mercy Health Services North*, 311 NLRB at 370, citing *Universal Security Instruments*, 250 NLRB 661, 662, 670 (1980).

12. The Union has Majority Status

A union cannot accrete a number of employees to an existing unit which exceed the numbers currently represented. See *Renaissance Center Partnership*, 239 NLRB 1247 (1979). However, that is not an issue here. As the summary charts (which are based on the stipulated spreadsheets) show, whether it be in the service and

maintenance unit or the LPN/Technical unit, the Union employees are in a definite majority. For the LPN/Technical combined unit, there are 162 total employees, 96 of whom are Union represented employees. (Pet. Ex. 23) With respect to the service and maintenance combined unit, there is a combined total of 218 employees of whom 124 are Union represented employees. (Pet. Ex. 24) When all the involved employees are combine in one single unit the Union still represents a majority.

The relative size of the groups is not a disqualifying factor. The Board has never held that an accretion cannot be found when the two groups of employees are even of approximately equal size. In fact, the Board has found accretions in cases involving approximately equal size groups, even when the represented employees barely constituted a majority of the combined workforce. *Central Soya Company*, 281 NLRB at 1309 and cases cited therein. Accord, *Special Machine & Engineering*, *supra*.

It is understood that a restrictive approach concerning accretion is warranted because of its impact on the rights of employees to select their representative. But, the Regional Director respected that concept by following the guidance in *Gitano*, *supra*. In *Gitano*, the Board explained that it was discarding the preexisting analysis because it did not properly balance the rights of new employees against those who transferred to the new location. The new analytical framework adopted by the Board in *Gitano* was intended to fully address the concern over the rights of interested employees to determine their bargaining representative. 308 NLRB at 1175 and fn. 23

C. To the Extent the Single Site Presumption Applies, it has Been Rebutted

Given the close proximity of the two campuses and the stipulation that the two facilities are a “single integrated enterprise” (T. 127), the single site presumption is not applicable. See *Presbyterian University Hospital*, 313 NLRB 1341, 1341-1342 (1995); *The Child’s Hospital*, 307 NLRB 90, 91-92 (1992). To the extent that this presumption is considered, under the applicable case law it has been amply rebutted by the facts of this case.

In *Manor Healthcare*, 285 NLRB 224 (1987), the Board reaffirmed the rebuttable presumption that a single healthcare facility bargaining unit is appropriate. The factors to be considered in determining whether the single-facility unit presumption has been rebutted include: geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, and bargaining history. *West Jersey Health System*, 293 NLRB 749, 751 (1989), citing *Manor Healthcare*, 285 NLRB 224, 228 (1987). Accord, *St. Luke’s Health System, Inc.*, 340 NLRB 1171, 1172 (2003).

Even before *Manor Healthcare*, consideration of the same factors led the Board in *Baptist Memorial Hospital*, 224 NLRB 201 (1976), to conclude that a bargaining unit involving only one building of a hospital system was inappropriate. In that case, the union sought to represent a unit at a single facility, located about one mile from the employer’s remaining facilities. The petitioned-for facility had originally functioned as a nursing home, but over the years, numerous operations transferred between it and the other facilities. At the time of the hearing, the petitioned-for building it was operating as a rehabilitation facility, with its patient care functions integrated with the other facilities.

Administration of labor relations were handled centrally, including hiring and new employee orientation, employment recordkeeping and payroll functions. There was significant common supervision, temporary transfers were common and as operations moved between the two units, employees in the affected operation moved with the operation.

More recent cases similarly found the single facility presumption to be rebutted based upon these same factors. For example, in *West Jersey Health System, supra*, the Board found that the single-facility presumption was rebutted by evidence of geographic proximity (with four divisions located no more than 20 miles from one another), functional integration including centralization of many departments, significant temporary and permanent employee interchange, and centralized coordination of job posting, hiring, firing and grievance handling, and personnel policies.

In *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975), the Board found that a combined unit including the employees of two (2) acute care hospitals was appropriate. The two facilities were 13 miles apart and had separate personnel and administration. In some services areas different skills and supervision was required. Nevertheless, there were sufficient other community of interest factors which overcame the single site presumption.

In *Kaiser Foundation Health Plan*, 225 NLRB 409 (1976), the Board found that a unit of psychotherapists at a single mental health clinic was not appropriate where the employer operated seven clinics and a hospital and, matters relating to pay, hours, benefits and employee recordkeeping were handled by the central personnel department, there was regular employee interchange, the clinic was functionally

integrated with the other facilities and employees at other facilities performed similar (although not identical) duties.

The employer in *Lutheran Welfare Services of Northeastern Pa.*, 319 NLRB 886 (1995), rebutted the single facility presumption by showing that the two nursing homes at issue were next door to each other, and shared one human resources director in charge of all personnel matters including responsibility for issuing serious discipline (suspensions and discharges) and the homes shared laundry, dietary, grounds keeping, housekeeping, maintenance, transportation services and had a “pool” of nurses who could be assigned to work at either facility.

Given the facts as discussed above, the single site presumption is overcome. Indeed, the cases cited above provide further support for the accretion proposed.

D. A Unit of the Non-represented Employees at East Would be Utterly Inappropriate

The facts here justify more than simply rebutting the single site presumption. Rather they demonstrate that the non-represented employees at East cannot constitute a separate appropriate unit. That group has little separate group identity and shares an overwhelming community of interest with the preexisting unit. Those non-represented employees work for the same “single employer” as the represented employees. Furthermore, both groups function in a “single integrated enterprise”. (T. 127) Not only do they work for the same “single” employer in a “single integrated enterprise”, the unrepresented employees physically work side by side with represented employees. Of the one hundred and sixty (160) East employees, the stipulated spreadsheets show that

one hundred and thirty-six (136) now work in departments side by side with Union represented employees. They are indistinguishable from one another.

In addition to working side-by-side, employees with the same or similar job titles perform the same or similar job duties. For the bulk of the positions at South and East, while there might be slightly different job titles, the parties' stipulated that the job functions are substantially identical regardless of their status as Union or non-union. (Joint Ex. 2 at ¶ 26). For the few additional classifications for which the parties did not stipulate as to similar duties and skills, the relevant job descriptions were attached as Ex. C. to Joint Ex. 2. Those documents and the relevant testimony demonstrate the similarity of skills and duties for those classifications. (Decision at 18-19)

As previously noted, the vast majority of employees have common first level supervision. (Decision at 17) In addition, there is a single Human Resources Department over Union and non-union employees. (Decision at 18) A single and common set of administrative officials manage the two (2) facilities. (Decision at 18)

As previously described there are many similar or identical working conditions that apply to both Union and non-union employees at East. (Decision at 18-19) Perhaps the most important common term of employment for the Union and non-union employees at both facilities is the combined or "dove-tailed" seniority list that was created and is utilized pursuant to the Integration Agreement.

There are other similar working conditions. Basic hours of work and shift times are the same. (T. 140, 157-158, 192, 200-201, 361, 407) Employees at both hospitals wear the same basic uniform within the same dress restrictions set by the Employer. (Joint Ex. 1 at ¶40; T. 136, 143, 146, 159, 168, 183, 198, 209, 416) All employees wear

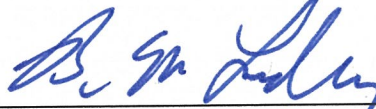
a LVHN name tag which does not distinguish whether the employee is working at East or at South or whether the employee is union or non-union. (Joint Ex. 1 at ¶¶40; T. 143, 146, 159, 168, 183, 209, 227, 238, 415-416) The pay periods and pay date for all employees are the same. (Joint Ex. 1 at ¶¶45; T. 229-230, 422)

Given these and other facts found by the Regional Director, the unrepresented employees at East do not constitute an appropriate bargaining unit in and of themselves. See, e.g., *The Child's Hospital, supra*. They have little separate identity other than those minor differences created by the Employer's refusal to merge the additional employees into the bargaining unit. Further, because of all the shared conditions of employment, the East employees have an overwhelming community of interest with the represented employees working at East and South. Two separate bargaining units of hospital employees would conflict with the Act's policy against over-fragmentation and the Board's Rule on appropriate bargaining units for acute care hospitals.

IV. **CONCLUSION**

For the reasons set forth above, the Board should affirm the Regional Director's Decision granting the Union's Petitions for Unit Clarification.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "B. M. Ludwig", is written over a horizontal line.

Bruce M. Ludwig, Esquire

Willig, Williams & Davidson

1845 Walnut Street, 24th Floor

Philadelphia PA 19103

(215) 656-3644

bludwig@wwdlaw.com

*Attorney for Petitioner, SEIU Healthcare Pennsylvania,
CTW, CLC*

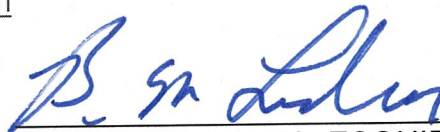
Dated: February 7, 2018

CERTIFICATE OF SERVICE

The undersigned certifies that on February 7, 2018 the foregoing was e-filed with the Executive Secretary of the National Labor Relations Board and copies were served on the following via e-mail:

Dennis P. Walsh, Regional Director
National Labor Relations Board
Region 4
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413
dennis.walsh@nrlrb.gov

Kristine Grady Derewicz, Esquire
Terrence H. Murphy
Ryan D. Freeman
Littler, Mendelson, P.C.
Three Parkway
160 Cherry Street, Suite 1400
Philadelphia, PA 15222-3100
kderewicz@littler.com
tmurphy@littler.com
rffreeman@littler.com



BRUCE M. LUDWIG, ESQUIRE
Willig, Williams & Davidson
1845 Walnut Street
24th Floor
Philadelphia, PA 19103
(215) 656-3644 (phone)
(215) 561-5135 (fax)
bludwig@wwdlaw.com

Dated: February 7, 2018